



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0935, FRL-9755-8]

Approval and Promulgation of Air Quality Implementation Plans; State of Florida; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing a full approval of the Best Available Retrofit Technology (BART) determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a regional haze state implementation plan (SIP) submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP). These BART determinations were submitted to the EPA in a draft regional haze SIP on April 13, 2012, for parallel processing, and re-submitted in final form on September 17, 2012. Specifically, the portion of Florida's September 17, 2012, regional haze SIP that is being acted upon in this final action addresses some of the requirements of the Clean Air Act (CAA or Act) and the EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. The EPA will take separate action at a later date to address the remainder of Florida's September 17, 2012, regional haze SIP.

EFFECTIVE DATE: This rule will be effective [insert 30 days from the date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-0935. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni may be reached by phone at (404) 562-9031, or via electronic mail at notarianni.michele@epa.gov.

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I. What is the Background for this Final Action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM_{2.5} can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation’s national parks and wilderness areas. This section of the CAA establishes as a national goal the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air

pollution.” On December 2, 1980, the EPA promulgated regulations to address visibility impairment in Class I areas that is “reasonably attributable” to a single source or small group of sources, i.e., “reasonably attributable visibility impairment.” *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. The EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. The EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA’s visibility protection regulations at 40 CFR 51.300-309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On March 19, 2010, and August 31, 2010, FDEP submitted and subsequently amended a SIP to address regional haze due to emissions from sources in the State’s and other states’ Class I areas. On May 25, 2012, the EPA published an action proposing a limited approval of Florida’s

regional haze SIP to address the first implementation period.¹ *See* 77 FR 31240. The EPA's May 25, 2012, proposed rulemaking covered Florida's March 19, 2010, and August 31, 2010, regional haze SIP submittals as well as the State's April 13, 2012, draft regional haze SIP that was submitted for parallel processing, and subsequently re-submitted in final form on September 17, 2012. In a draft regional haze SIP provided on July 31, 2012, Florida addressed 18 reasonable progress units and 11 facilities with BART-eligible electric generating units (EGUs) subject to the Clean Air Interstate Rule (CAIR) (a total of 20 EGUs) that were not covered by Florida's April 13, 2012, draft regional haze SIP.² It also amended the SIP to remove Florida's reliance on CAIR to satisfy BART and reasonable progress requirements for the State's affected EGUs.

Florida's September 17, 2012, final regional haze SIP consolidated its draft April 13, 2012, and July 31, 2012, regional haze SIP submittals into a single package. The EPA has not yet proposed action on Florida's July 31, 2012, draft regional haze SIP as finalized on September 17, 2012. Because of the interdependence between the various elements of Florida's regional haze SIP, the EPA has elected to: (1) take final action on the BART determinations addressed in

¹ In a separate action published on December 30, 2011 (76 FR 88219), the EPA proposed a limited disapproval of the Florida regional haze SIP, and on June 7, 2012 (77 FR 33642), the EPA finalized a limited disapproval of the regional haze SIPs for several states, but deferred final action on the Florida regional haze SIP. The EPA will address this limited disapproval when it completes action on the remainder of Florida's September 17, 2012, regional haze SIP.

² The facilities addressed in the July 31, 2012, proposed amendment for reasonable progress are: City of Gainesville Deerhaven unit 5; Florida Power & Light (FP&L) Manatee units 1, 2; FP&L Turkey Point units 1, 2; Gulf Power Company Crist unit 7; Lakeland Electric C.D. McIntosh unit 3; JEA Northside/St. Johns River Power Park (SJRPP) units 3, 16, 17; Progress Energy Anclote units 1, 2; Progress Energy Crystal River units 1, 2, 3, 4; and Seminole Electric Cooperative units 1, 2. The facilities addressed in the July 31, 2012, proposed amendment for BART are: City of Tallahassee - Arvah B.Hopkins Generating Station (unit 1); Progress Energy Anclote Power Plant (units 1, 2); Progress Energy Crystal River Power Plant (units 1, 2); FP&L Manatee Power Plant (units 1, 2); FP&L Martin Power Plant (units 1, 2); FP&L Turkey Point Power Plant (units 1, 2); Gulf Power Company Crist Electric Generating Plant (units 6, 7); Gulf Power Company Lansing Smith Plant (units 1, 2); JEA Northside SJRPP (unit 3); Lakeland Electric C.D. McIntosh, Jr. Power Plant (units 1, 2); and Reliant Energy Indian River (units 2, 3).

the May 25, 2012, proposed action; and (2) defer final action on the remaining elements of the SIP addressed in the Agency's May 25, 2012, proposed action until it has taken action on the BART and reasonable progress determinations for the facilities included in Florida's draft July 31, 2012, regional haze SIP. As such, today's final action fully approves all of the BART determinations addressed in the EPA's May 25, 2012, proposed action. The EPA will propose action on the remaining facilities addressed in Florida's July 31, 2012, draft regional haze SIP (as finalized in the September 17, 2012, final regional haze SIP) and take final action on the entire remaining elements of Florida's regional haze plan in actions subsequent to today's final rulemaking.

II. What is the Action the EPA is Taking?

The EPA is finalizing a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a draft regional haze SIP submitted by the State of Florida on April 13, 2012, to the EPA for parallel processing. Florida re-submitted this draft regional haze SIP in final form on September 17, 2012.³

Specifically, the BART determinations addressed by this action are: Tampa Electric Company - Big Bend Station (Units 1, 2, 3); City of Tallahassee - Purdom Generating Station (Unit 7); FP&L - Port Everglades Power Plant (Units 3, 4); CEMEX; White Springs Agricultural Chemical - SR/SC Complex; City of Gainesville - Deerhaven Generating Station (Unit 3); City of Vero Beach - City of Vero Beach Municipal Utilities (Units 2, 3, 4); FP&L - Putnam Power Plant (Units 3, 4, 5, 6, 7, 8, 9, 10); Lake Worth Utilities - Tom G. Smith (Units 6, 9); City of

³ The EPA proposed approval of FDEP's April 13, 2012, draft regional haze SIP contingent upon Florida providing the EPA a final regional haze SIP that was not changed significantly from the April 13, 2012, draft regional haze SIP. Florida provided its final regional haze SIP on September 17, 2012. There were no substantive changes made to the final submittal for these facilities.

Tallahassee - Arvah B. Hopkins Generating Station (Unit 4); FP&L - Riviera Power Plant (Unit 4); Florida Power Corp. - Bartow Plant (Unit 3); Lakeland Electric - Charles Larsen Memorial Power Plant (Unit 4); Ft. Pierce Utilities Authority - H D King Power Plant (Units 7, 8); FP&L - Cape Canaveral Power Plant (Units 1, 2); Atlantic Sugar Association - Atlantic Sugar Mill; Buckeye Florida – Perry; ExxonMobil Production - St Regis Treating Facility and Jay Gas Plant; IFF Chemical Holdings, Inc.; IMC Phosphates Company - South Pierce; International Paper Company - Pensacola Mill; Mosaic – Bartow; Mosaic - Green Bay Plant; Osceola Farms; Sugar Cane Growers Co-Op; U.S. Sugar Corp. - Clewiston Mill and Refinery; Solutia Inc., Sterling Fibers, Inc.; U.S. Sugar Corp. - Bryant Mill; IMC Phosphates Company - Port Sutton Terminal; Georgia Pacific-Palatka; Smurfit-Stone-Fernandina Beach; Smurfit-Stone–Panama City; Mosaic-New Wales; Mosaic-Riverview; and CF Industries.

On May 25, 2012, the EPA proposed a limited approval of the March 19, 2010, August 31, 2010, and draft April 13, 2012, regional haze SIP submittals to implement the regional haze requirements for Florida on the basis that these submissions, as a whole, strengthen the Florida SIP. In today’s action, the EPA has elected to finalize approval of only those BART determinations identified above and to defer final action on the remaining elements of the regional haze SIP addressed in the Agency’s May 25, 2012, proposed action. The EPA will take final action on those remaining elements once it has taken action on the BART and reasonable progress determinations for the facilities included in Florida’s July 31, 2012, draft regional haze SIP as incorporated into its September 17, 2012, final regional haze SIP.

The EPA received adverse comments on its May 25, 2012, proposed action on Florida’s regional haze SIP. See section III of this rulemaking for a summary of the comments received on the EPA’s May 25, 2012, proposed action that relate to the BART determinations being acted

upon today and the Agency's responses to these comments. Detailed background information and the EPA's rationale for the proposed action is provided in the EPA's May 25, 2012, proposed rulemaking. *See* 77 FR 31240.

The EPA's May 25, 2012, proposed action was contingent upon Florida providing a final regional haze SIP that was substantively the same as the draft proposed for approval by the EPA in the proposed rulemaking. *See* 77 FR 31242. Florida provided its final regional haze SIP on September 17, 2012. While there are minor differences between the provisions covered by the April 13, 2012, draft regional haze SIP and those same provisions addressed in the final September 17, 2012, regional haze SIP, the EPA has determined that these differences do not warrant re-proposal of this action.

III. What are the EPA's Responses to Comments Received on this Action?

The EPA received two sets of comments on its May 25, 2012, proposed rulemaking on Florida's regional haze SIP described above. Specifically, the comments were received from the Sierra Club and National Parks Conservation Association (collectively) and from the Florida Electric Power Coordinating Group Environment Committee. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as "the Commenter") are provided in the docket for today's final action. A summary of the comment that relates to the approvability of the BART determinations subject to today's final action and the EPA's response is provided below. The remaining comments will be addressed in a subsequent final action on the remaining elements of Florida's regional haze SIP.

Comment 1: The Commenter believes that the EPA must clarify its proposed decisions on Florida’s BART determinations. The Commenter notes that the proposal “includes BART proposals for the five sources listed in Table 8 as ‘Facilities With Unit(s) With a Complete BART Analysis,’” but it does not believe that the EPA clearly states that it is proposing to approve or disapprove the State’s BART disposition for each of these sources. If the EPA is approving them, the Commenter states that it must include them as part of the enforceable conditions of the regional haze SIP.

Response 1: The EPA specifically addressed each of the proposed BART determinations for the five sources identified by the Commenter in five subsections under the portion of the notice addressing BART (section V.C.6), and in a subsection entitled “EPA Assessment” (section V.C.6.vi), stated that “EPA proposes to agree with Florida’s analyses and conclusions for the five BART-subject sources described above. The EPA has reviewed the State’s analyses and believes that they were conducted in a manner that is consistent with the EPA’s BART Guidelines and the EPA’s *Air Pollution Control Cost Manual* (<http://www.epa.gov/ttncaatl/products.html#cccinfo>).” This is a clear statement of the EPA’s intent to approve these BART determinations. Regarding the emissions limits and conditions for these five BART determinations that were adopted by Florida and have been incorporated into the facilities’ federally enforceable title V operating permits, the EPA has incorporated these limits and conditions into the SIP in 40 CFR 52.520 as part of this final action.

IV. What is the Effect of this Final Action?

The EPA is finalizing a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a draft regional haze SIP submitted by the State of Florida on April 13, 2012, to the EPA for parallel processing. Florida submitted this draft regional haze SIP in final form on September 17, 2012. The EPA is taking this approach because these BART determinations meet the regional haze requirements of the CAA and RHR and because Florida's SIP will be stronger and more protective of the environment with the implementation of these measures. The EPA has elected to defer final action on the remaining elements of the regional haze SIP addressed in the Agency's May 25, 2012, proposed action because of the interdependence between the various elements of Florida's regional haze SIP. The EPA will take final action on the remaining elements once it has taken action on the BART and reasonable progress determinations for the facilities included in Florida's July 31, 2012, draft regional haze SIP, as incorporated into its September 17, 2012, final regional haze SIP. As mentioned above, Florida's September 17, 2012, regional haze SIP addresses 18 reasonable progress units and 11 facilities with BART-eligible EGUs subject to CAIR (a total of 20 EGUs) that were not covered by Florida's April 13, 2012, draft regional haze SIP. The EPA will also take action at a later date to address the Agency's December 30, 2011, proposed limited disapproval of the Florida regional haze plan.

V. Final Action

The EPA is finalizing a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a draft regional haze SIP submitted by the State of Florida on April 13, 2012, to the EPA for parallel processing. Florida re-submitted this regional haze SIP in final form on September 17, 2012. Specifically, this action addresses

only the aforementioned BART determinations included in the draft regional haze SIP submitted to the EPA for parallel processing on April 13, 2012 (as re-submitted in final form on September 17, 2012), as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 15, 2012

A. Stanley Meiburg
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K - Florida

2. Section 52.520(e) is amended by adding a new entry for “Portion of Regional Haze Plan Amendment submitted on September 17, 2012” at the end of the table to read as follows:

§52.520 Identification of plan.

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(e) * * *

EPA-Approved Florida Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
**	**	*	*	*
Portion of Regional Haze Plan Amendment submitted on September 17, 2012	September 17, 2012	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	Only the BART determinations approved in [Insert citation of publication] are incorporated.

